

PROSECUTING AND DEFENDING A SMALL CLAIMS CASE

Introduction To Instructions

As of May 7, 2009

This Sandy Justice Court instructional package parallels the small claims information found at the Utah State Court web site “www.utcourts.gov“. Exceptions include:

Instruction (2) has added language in *italics type* instructing litigants to use “Sandy Justice Court” forms. Litigants are encouraged to copy them from the Sandy Justice Court web site for use in small claims actions filed in this court:

“<http://www.sandy.utah.gov/government/justice-court/small-claims.html>”

Plaintiffs and defendants are encouraged to read these small claims instructions carefully. Also, they should become familiar with Title 78A, Chapter 8 of the Utah Code; the Utah Rules of Small Claims Procedure and the forms utilized in small claims actions.

The most current version of the applicable state statutes may be viewed at:

“<http://www.le.utah.gov/UtahCode/section.jsp?code=78A-8>”

The most current version of the Rules of Small Claims Procedure may be viewed at:

“<http://www.utcourts.gov/resources/rules/srpe/index.htm>”

In addition, the Utah State Court web site also has a self-help section that may be of some assistance to those involved in small claims litigation. It may be viewed at:

“<http://www.utcourts.gov/howto/smallclaims/>”

SPECIAL NOTE:

Under Federal Law, before a default judgment can be entered against an individual, a plaintiff is required to file an affidavit stating whether the defendant is in active military service as detailed in Instruction (19). Affected parties should consider filing the required affidavit at the time they file their case to avoid delay in having a default judgment finding actually entered.

The following URL to the Department of Defense may be of assistance to you in connection with this requirement:

<http://www.defenselink.mil/faq/pis/PC09SLDR.html>

SMALL CLAIMS INFORMATION AND INSTRUCTIONS

Please read carefully. Definitions follow the instructions.

(1) ATTORNEYS. You may hire an attorney to represent you, but small claims procedures are simplified to help you proceed without an attorney. You may also be represented by an employee or, with the express approval of the court, by any other person who is not compensated for the representation. This manual will assist you in prosecuting or defending a small claims case. The court clerks can help with procedural questions, but they cannot give legal advice nor can they go beyond these instructions. If you have an unanswered question, you may need to consult an attorney. The court clerks cannot refer you to an attorney.

(2) STATUTES, RULES AND FORMS. Utah Code Annotated Title 78A, Chapter 8 and the Rules of Small Claims Procedures, govern small claims procedures (See URLs on page one). The Small Claims Information and Instructions (This document you are reading) and small claims related forms are available in “.pdf” format and may be downloaded from:

[“http://sandy.utah.gov/government/justice-court/small-claims.html”](http://sandy.utah.gov/government/justice-court/small-claims.html)

Small claims actions in the Sandy Justice Court must be that court’s forms or on forms approved by the Judicial Council with Sandy Justice Court headers.

(3) PARTIES. The party filing the case is the plaintiff. The party responding to the case is the defendant. A party may be self-represented, represented by an attorney or represented by an employee or represented by another uncompensated party with the express permission of the court.

(4) LIMITS ON SMALL CLAIMS. Small claims cases are to recover money only, and claims cannot exceed \$10,000. If the claim exceeds \$10,000, the plaintiff must file a civil complaint in the district court under the Utah Rules of Civil Procedure. The defendant must owe the debt to the plaintiff or, on a counter affidavit, vice-versa. Small claims cases cannot be used to sue a governmental entity, to sue for possession of property, to evict a tenant or to recover claims assigned to you by another.

(5) FEES. Fees must be paid at the time a document is filed or a service is provided. If you cannot afford the fee, you can file an Affidavit of Impecuniosity which can be downloaded from the Sandy Justice Court web site or obtained from the clerk. The court clerk will accept and hold the filing without charging the fee, but you will be required to provide financial information from which the court will later decide whether to waive or defer all or part of the fee. Entities other than the court also charge fees, which cannot be waived or deferred by the court. For example, the county sheriff, constable or private process server will charge a fee to serve papers. The county recorder will charge a fee to record a judgment. There may be others, but the most common small claims fees are as follows:

Document or Service	Fee
Printed Small Claims Information and Instruction Manual (Available for free from the court website)	\$5

Document or Service	Fee
Small claims NCR (no carbon required) forms	\$.50/form
Affidavit or interpleader affidavit – Claim of \$2,000 or less	\$60
Affidavit or interpleader affidavit – Claim of between \$2,000-\$7,500	\$100
Affidavit or interpleader affidavit – Claim of \$7,500 up to \$10,000	\$185
Counter affidavit – Claim of \$2000 or less	\$50
Counter affidavit – Claim of Between \$2,000-\$7,500	\$70
Counter affidavit – Claim of \$7,500 up to \$10,000	\$120
Notice of appeal	\$225 to the district court \$10 to the justice court
Abstract of judgment	\$50
Writ of garnishment	\$50 to the court \$10 to the garnishee
Writ of continuing garnishment	\$50 to the court \$25 to the garnishee
Writ of execution	\$50
Regular copies	\$.25 per page
Certified copies	\$4 for the certificate and \$.50 per page
Other Statutory Fees	
Witness fee	\$18.50 for first day. \$49 for subsequent days. Mileage at \$1 for every 4 miles over 50 one way. Paid to the witness.
Service of process fee County recorder fee	Amount determined by applicable statute.

(6) **SERVING OTHER PARTIES.** Each party must serve on all other parties a copy of any document filed with the court and then file proof of service with the court. There are special requirements for serving the affidavit, which are explained in Paragraphs (14, 15). The court clerk will mail a copy of defendant's counter affidavit to the plaintiff. Otherwise, to serve another party, mail the document to them at the address shown on the affidavit unless you have a more recent address. Retain for your records a copy of everything you file with the court and everything served on you by other parties.

(7) **PROOF OF SERVICE.** In addition to serving the other party, you must file with the court proof of having done so. Most of the small claims forms have a proof of mailing certificate at the end of the form for this purpose. For any document without a proof of mailing certificate, complete a separate proof of service form (Form D) and mail it to the court clerk.

(8) **CALCULATING TIME.** If a designated period of time is 10 or fewer days, the reference is to business days, excluding intervening Saturdays, Sundays and holidays. If the time designated is 11 or more days, the reference is to calendar days. The day from which the time begins to run is not

included. The last day of the period is included. If the last day is a Saturday, Sunday or holiday, the time expires on the next business day.

(9) FILING WITH THE COURT. Whenever the rules or this manual refer to filing a document, they mean delivering the document to the court clerk. This can be done by hand-delivery or by mail, although the sender assumes the risk of failure of delivery.

(10) WHERE TO FILE. A small claims case must be filed in the court where the defendant resides or where the claim arose. Depending on the circumstances this may be the justice court or the district court.

(a) IN JUDICIAL DISTRICTS 1, 5, 6, 7, 8. If the defendant resides or the claim arose within the limits of a municipality and if the municipality has a justice court, file the case in the municipal justice court. If the municipality has no justice court, file the case in the county justice court. If the defendant resides or the claim arose in the unincorporated county, file the case in the county justice court. If there is no municipal or county justice court, file the case in the district court. If there is more than one district court in the county, file the case in any of them. Consult the court clerk to see whether there are restrictions.

(b) IN JUDICIAL DISTRICTS 2, 3, 4. At the option of the plaintiff, file the case in any district court or justice court of the county or municipality in which the defendant resides or the claim arose. Consult the court clerk to see whether there are restrictions.

(11) COMPLETING THE COVER SHEET (FORM A). The plaintiff must complete and file a cover sheet with the affidavit. Driver license number, social security number and date of birth are not required for filing but are required to perfect a judgment lien against real property. See Paragraph (27)(a). All parties are required to notify the court and the other party of a change of address. Names and addresses are public records. All other information on the cover sheet is private unless a judgment is entered against that party.

(12) COMPLETING THE AFFIDAVIT (FORM B). Plaintiff's name and address. If you are suing in your personal capacity list your name and address. If you are representing a business with a trade name, including a corporation, partnership or solely owned business, list the business' trade name and address.

Defendant's name and address. If you are suing a natural person, list the person's name and address. If you are suing a business with a trade name, including a corporation, partnership or solely owned business, list the business' trade name and address. Contact the Department of Commerce at 801-530-4849 or www.utah.gov/serv/bes to obtain a corporation's name and the name of its registered agent.

The court clerk assigns the case number.

Paragraph (1). Enter the amounts claimed in the spaces provided. Include in the principal amount any interest accrued to the date of filing. Do not file an amended affidavit to claim interest between the date of filing and the date of judgment. If the court grants judgment, the court will include prejudgment interest in the judgment if you qualify for it.

Paragraph (2). Enter the date on which the claim arose. Describe the facts that form the basis of the claim.

Signature. Sign the affidavit under oath before a notary or a court clerk.

Summons. The court clerk will schedule a trial date and complete the summons.

(13) COMPLETING THE INTERPLEADER AFFIDAVIT (FORM C). Interpleader is a special type of small claims case in which the plaintiff does not claim money but rather holds money claimed by two or more other persons. Do not complete Form C unless you have this special type of case. The instructions for completing Form C are the same as for Form B in Paragraph (12).

(14) SERVING THE AFFIDAVIT AND SUMMONS ON THE DEFENDANT. The court clerk will give you a copy of the affidavit and summons to serve on the defendant. The affidavit and summons must be served on the defendant by one of the following methods at least 30 days before the trial date:

(a) Mail a copy of the affidavit and summons to the defendant by any method that requires the defendant to acknowledge receipt with a signature. (Examples are registered or certified mail with return receipt signed by addressee only or a commercial courier service that will return a receipt signed by the addressee only.) The date of service is the date the defendant signs the receipt. OR

(b) Give the affidavit and summons to the sheriff, constable or private process server, who will deliver the papers to the defendant.

If the affidavit is not served within 120 days after filing, the action may be dismissed by the court with notice to the plaintiff.

If defendant cannot be served by one of these methods, plaintiff may refile the case as a civil complaint in the district court and obtain alternative service under the Utah Rules of Civil Procedure [URCP].

(15) COMPLETING THE PROOF OF SERVICE (FORM D). If a sheriff, constable or private process server serves the affidavit and summons on the defendant, that person will complete and file the proof of service form. If the plaintiff serves the affidavit and summons on the defendant by mail with a signed receipt, the plaintiff must complete and file the proof of service form with the original receipt signed by the defendant attached. For proof of service of documents other than the affidavit and summons, complete the certificate of mailing at the end of the form or, if there is no certificate of mailing on the form, complete Form D with a brief description of the document, the date of mailing and the address to which the document was mailed. A signed receipt is not required for documents other than the affidavit and summons. Proof of service must be filed within 10 days after service. If proof of service is not filed and the other party fails to appear at trial, the judge will not grant a dismissal or default judgment. See Paragraph (19).

(16) COMPLETING THE COUNTER AFFIDAVIT (FORM E). If the plaintiff owes defendant money, the defendant may file a counter affidavit up to 15 days before the trial. The instructions for completing Form E are the same as for Form B in Paragraph (12). The court clerk will complete the summons and mail a copy of the counter affidavit to the plaintiff. The court clerk may reschedule the

trial. The defendant may not claim more than \$10,000 in the counter affidavit. If the defendant's claim exceeds \$10,000, the defendant may file a civil complaint in the district court under the Utah Rules of Civil Procedure.

(17) SETTLEMENT BEFORE TRIAL (FORM F). If defendant does not deny the facts in the affidavit or if plaintiff does not deny the facts in the counter affidavit, the parties should make arrangements to pay the claims. If the case goes to trial and collection through the court, additional costs and interest may be charged. If the case is settled prior to trial, complete and file a motion to dismiss.

(18) POSTPONING THE TRIAL (FORM G). To change the trial date, complete and file a motion for continuance at least five days before trial. A continuance is not automatic, you must provide a good reason. The party requesting the continuance may be ordered to pay the other party's costs, such as the reasonable and necessary cost of preparing for trial.

(19) FAILURE TO APPEAR AT TRIAL. A party who fails to appear at trial after receiving notice of the trial is in default and will lose. A claim by a non-appearing party will be dismissed. A claim against a non-appearing party will be granted judgment. A judgment against a non-appearing party is called a default judgment. In order to obtain a default judgment, the plaintiff must file an affidavit stating whether the defendant is in the military (Form P). This is required by federal law. If the plaintiff does not know whether the defendant is in military service, the judge may require the plaintiff to file a cost bond to protect the defendant's interests.

(20) TRIAL, EVIDENCE AND WITNESSES. If possible, you observe a session in the small claims court before your trial date. By doing so, you will become more familiar with court procedures and you will be better prepared to present your case. Bring to the trial all witnesses, documents and photographs necessary to prove your claim or defense or the case may be decided against you for lack of proof. Evidence may be offered through the statements of witnesses, who may be any person with knowledge of the relevant facts. Evidence may be offered through documents, such as business records, bids, appraisals, invoices and account statements. Evidence may be offered through photographs, such as photographs of the damage to a vehicle. The judge will usually question the parties and witnesses. The courts do not provide language interpreters. If you need an interpreter for yourself or a witness, you must make those arrangements.

(21) SUBPOENA. If a witness will not testify or produce a document voluntarily, you may require that person to attend or produce a document by serving a subpoena. For more information about subpoenas, see Utah Rule of Civil Procedure 45 and Civil Procedure Form 40. The court clerk will issue a subpoena upon request. Any person over the age of 18 who is not a party to the case may serve the subpoena on the witness by any method permitted for serving the complaint in a civil action. The subpoena must be served at least 5 business days before trial. To ensure the subpoena is correctly served on time, give the subpoena and witness fee to the sheriff, constable or private process server, who will deliver the subpoena to the witness and file proof of service with the court. A witness may appear voluntarily without a subpoena, but the judge will not continue the trial if a witness without a subpoena fails to appear. If a witness served with a subpoena fails to appear, the witness may be held in contempt of court.

(22) JUDGMENT (FORM H or I). The judge will decide the case based on the evidence. Usually the judge decides the case immediately after the trial. If the judge takes the case under advisement, the

judge should issue a decision within 60 days, and the court clerk will notify the parties by mail. If the judge decides for the defendant on plaintiff's affidavit or for the plaintiff on defendant's counter affidavit, neither party owes the other any money, unless the judge orders one party to pay the other party's court costs. If the judge decides for the plaintiff on plaintiff's affidavit or for the defendant on defendant's counter affidavit, the judge will enter a judgment for money (Form H) or a judgment determining the defendants' rights to money held by the plaintiff (Form I). In a judgment for money, the winning party is called the judgment creditor and the losing party is called the judgment debtor. The judgment principal will include court costs and prejudgment interest. The judgment principal continues to accrue interest after judgment. In addition to the judgment principal and post-judgment interest, the creditor is entitled to collect from the debtor the cost of collecting the judgment. The judgment exists for 8 years, and the creditor must collect it or renew it within that time.

(23) NOTICE OF ENTRY OF JUDGMENT (FORM J). The court clerk will deliver a copy of the judgment to all parties present at the trial. If the judge grants a judgment or dismissal to one party because the other party failed to appear after notice, the party who appeared must serve a copy of the judgment or dismissal on the non-appearing party. The appearing party can serve the judgment by mail. Proof of service can be by Form D, Form J, or the proof of service section on the bottom of Form H (preferred).

(24) SETTING ASIDE DISMISSAL OR DEFAULT JUDGMENT (FORM K). If the judge dismisses an affidavit or counter affidavit without prejudice, the party can file a new affidavit or counter affidavit without setting aside the dismissal. New filing fees apply. If the judge dismisses an affidavit or counter affidavit with prejudice, the case cannot be re-filed, but the non-appearing party may complete and file a motion to set aside the dismissal. If the judge enters a default judgment, the non-appearing party may complete and file a motion to set aside the judgment. The party requesting the dismissal or default judgment be set aside must file the motion within 15 days after the dismissal or default judgment, showing a good reason for not appearing at the trial. The requesting party may be ordered to pay the other party's costs, such as the reasonable and necessary cost of preparing for trial. If the dismissal or default judgment is set aside, the court clerk will reschedule the trial and notify the parties. The judge may allow a motion to set aside to be filed late if the motion is filed within a reasonable time after dismissal or default judgment and the party shows a good reason for filing late.

(25) NOTICE OF APPEAL (FORM L). A party may appeal a small claims judgment by filing a notice of appeal within 30 days after the dismissal or judgment. The notice of appeal is filed with the Sandy Justice Court which issued the judgment. The appeal is for a new trial, called a trial de novo, held in the district court. The court clerk will forward the trial court's file to the 3rd District Court - West Jordan Department. The parties do not file new affidavits. The District Court requires mediation before a trial is scheduled. If the matter is not resolved and a trial is scheduled, the procedures for the trial de novo are the same as for the original trial. The parties present the evidence again. The decision after the trial de novo is final and cannot be appealed. A notice of appeal does not stay the judgment, and the judgment creditor may attempt to collect during the appeal. See Paragraph (27). To stay the judgment and prohibit collection, the debtor must file a bond with the 3rd District Court - West Jordan Department in an amount sufficient to cover the judgment awarded.

(26) SATISFACTION OF JUDGMENT (FORM M). When the judgment is paid, the creditor must file a satisfaction of judgment. A satisfaction of judgment must also be filed with the county recorder in each county in which an abstract of judgment (FORM O) was filed. See Judgment Lien, Paragraph

(27)(a). The debtor may file a satisfaction of judgment if the creditor fails to do so. If the creditor fails to object within 10 business days, the court may enter the satisfaction.

(27) COLLECTING A SMALL CLAIMS JUDGMENT. If the debtor does not voluntarily pay the judgment, the creditor may take steps to collect it. To collect a small claims judgment the creditor uses the same procedures as for collecting a civil judgment. The process is governed by Utah Rules of Civil Procedure 64A, 64B, 64C, 64D, 64E, 64F and 69, which are not part of this manual but which can be obtained from the State Courts' website. This manual contains a brief summary of the procedures, but creditors and debtors should refer to the Utah Rules of Civil Procedure to understand their full rights and responsibilities. State and federal law designate some property as exempt from seizure. The list of exempt property is in Utah Code Title 78B, Chapter 5.

(a) JUDGMENT LIEN. A judgment lien on real property is not a direct collection of money from the debtor, but the lien prevents the debtor from selling or mortgaging real property until the judgment is paid or expires. Obtain an abstract of judgment (FORM O) from the court clerk. File the abstract of judgment in the district court and in the office of the county recorder in the county where the debtor's real estate is located. If the debtor has real property in more than one county, file in each county. Also file with the district court and the county recorder a judgment information statement (FORM N) that contains: the amount of the judgment; the name, address, social security number, date of birth, and driver's license number of the debtor; the name and address of the creditor; whether the court has stayed the judgment and when the stay expires; the date of recording in the recorder's office; and the recorder's entry number.

(b) SUPPLEMENTAL ORDER. Use a supplemental order to obtain information about the debtor's employment, income, accounts and other property. Download a supplemental order form from the Sandy Justice Court web site or obtain one from the court clerk, complete and file the form. The court clerk will set a date for the debtor's and creditor's appearance. Deliver the order to the sheriff, constable or private process server, who will serve the papers on the debtor.

(c) WRIT OF GARNISHMENT. Use a writ of garnishment to seize non-exempt money owed to the debtor by a third party, such as the debtor's employer or bank. Download the appropriate garnishment related forms from the Sandy Justice Court web site or obtain a packet from the court clerk, complete and file the forms. To have the papers served, deliver them to one of the officials authorized by Utah Code Section 78-12a-2.

(d) WRIT OF EXECUTION. Use a writ of execution to seize and sell the debtor's non-exempt real or personal property. Download a writ of execution form from the Sandy Justice Court web site or obtain one from the court clerk, complete and file the forms along with a description and location of the property to be seized. The court clerk will issue the writ and other papers. To have the papers served, deliver them to one of the officials authorized by Utah Code Section 78-12a-2.

(28) DEFINITIONS. The following are not official definitions, but they may help you understand unfamiliar terms:

Affidavit. An allegation of facts sworn to under oath. The oath is usually administered by a notary public or court clerk. The affidavit must be filed by the plaintiff. The counter affidavit may be filed by the defendant.

Appeal. A higher court reviewing the decisions of a lower court. In small claims cases the appeal is a new trial, called a trial de novo.

Attorney fees. The fees charged by an attorney. A party is not entitled to recover attorney fees unless authorized to do so by contract between the parties or by statute.

Court costs. Costs associated with filing or defending a small claims case and preparing for trial. Costs might include filing fees, service fees, witness fees, etc. Costs do not include attorney fees.

Default. The failure of a party to appear as required.

Defendant. The party against whom a claim is made.

Dismissed with/without prejudice. When a case is dismissed with prejudice, it cannot be refiled. If a case is dismissed without prejudice, it can be refiled.

Garnishee. A person holding a judgment debtor's property, such as debtor's employer (holding wages) or bank (holding an account).

Hearsay. Testimony by a witness in court about statements made out of court.

Judge pro tempore. A lawyer appointed by the Utah Supreme Court to sit temporarily as a judge. A judge pro tempore has all the authority of a regularly appointed judge.

Judgment. The final decision of the judge about who owes money to whom.

Judgment creditor. The party in whose favor a judgment has been rendered.

Judgment debtor. The party against whom a judgment has been rendered.

Motion. Asking the court to do something.

Plaintiff. The party who files a claim.

Praecipe. A document describing property to be seized.

Subpoena (duces tecum). An order to appear in court at a specified time (and to bring a specified document). Failure to obey a subpoena is punishable as a contempt of court.

Trial. The hearing at which the parties present evidence to the judge.

End of Definitions

UTAH RULES OF SMALL CLAIMS PROCEDURE
As of 4/15/09

1. General provisions.
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Rule 1. General provisions.

- (a) These rules constitute the simplified rules of procedure and evidence in small claims cases required by the Utah Code and shall be referred to as the Rules of Small Claims Procedure. They are to be interpreted to carry out the statutory purpose of small claims cases, dispensing speedy justice between the parties.
- (b) These rules apply to the initial trial and any appeal under Rule 12 of all actions pursued as a small claims action.
- (c) If the Supreme Court has approved a form for use in small claims actions, parties must file documents substantially similar in form to the approved form.
- (d) By presenting a document, a party is certifying that to the best of the party's knowledge it is not being presented for an improper purpose and the legal and factual contentions are made in good faith. If the court determines that this certification has been violated, the court may impose an appropriate sanction upon the attorney or party.

Rule 2. Beginning the case.

- (a) A case is begun by plaintiff filing with the clerk of the court either:
- (a)(1) an affidavit stating facts showing the right to recover money from defendant; or
- (a)(2) an interpleader affidavit showing that plaintiff is holding money claimed by two or more defendants.
- (b) The affidavit qualifies as a complaint under the Utah Code
- (c) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the small claims affidavit.
- (d) In an interpleader action, plaintiff must pay the money into the court at the time of filing the

affidavit or acknowledge that it will pay the money to whomever the court directs.(e) Upon filing the affidavit, the clerk of the court shall schedule the trial and issue the summons for the defendant to appear.

Rule 3. Service of the affidavit.

(a) After filing the affidavit and receiving a trial date, plaintiff must serve the affidavit and summons on defendant. To serve the affidavit, plaintiff must either:

(a)(1) have the affidavit served on defendant by a sheriff's department, constable, or person regularly engaged in the business of serving process and pay for that service; or

(a)(2) have the affidavit delivered to defendant by a method of mail or commercial courier service that requires defendant to sign a receipt and provides for return of that receipt to plaintiff.

(b) The affidavit must be served at least 30 calendar days before the trial date. Service by mail or commercial courier service is complete on the date the receipt is signed by defendant. If the affidavit is not served within 120 days after filing, the action may be dismissed without prejudice upon the court's own initiative with notice to the plaintiff.

(c) Proof of service of the affidavit must be filed with the court no later than 10 business days after service. If service is by mail or commercial courier service, plaintiff must file a proof of service. If service is by a sheriff, constable, or person regularly engaged in the business of serving process, proof of service must be filed by the person completing the service.

(d) Each party shall serve on all other parties a copy of all documents filed with the court other than the counter affidavit. Each party shall serve on all other parties all documents as ordered by the court. Service of all papers other than the affidavit and counter affidavit may be by first class mail to the other party's last known address. The party mailing the papers shall file proof of mailing with the court no later than 10 business days after service. If the papers are returned to the party serving them as undeliverable, the party shall file the returned envelope with the court.

Rule 4. Counter affidavit.

(a) Defendant may file with the clerk of the court a counter affidavit stating facts showing the right to recover money from plaintiff.

(b) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the counter affidavit.

(c) Any counter affidavit must be filed at least 15 calendar days before the trial. The clerk of the court will mail a copy of the counter affidavit to plaintiff at the address provided by plaintiff on the affidavit.

(d) A counter affidavit for more than the monetary limit for small claims actions may not be filed under these rules.

Rule 5. No answer required.

No answer is required to an Affidavit or Counter Affidavit. All allegations are deemed denied.

Rule 6. Pretrial.

- (a) No discovery may be conducted but the parties are urged to exchange information prior to the trial.
- (b) Written motions and responses may be filed prior to trial. Motions may be made orally or in writing at the beginning of the trial. No motions will be heard prior to trial.
- (c) One postponement of the trial date per side may be granted by the clerk of the court. To request a postponement, a party must file a motion for postponement with the court at least 5 business days before trial. The clerk will give notice to the other party. A postponement for more than 45 calendar days may be granted only by the judge. The court may require the party requesting the postponement to pay the costs incurred by the other party.

Rule 7. Trial.

- (a) All parties must bring to the trial all documents related to the controversy regardless of whose position they support.
- (b) Parties may have witnesses testify at trial and bring documents. To require attendance by a witness who will not attend voluntarily, a party must subpoena the witness. The clerk of the court or a party's attorney may issue a subpoena pursuant to Utah Rule of Civil Procedure 45. The party requesting the subpoena is responsible for service of the subpoena and payment of any fees. A subpoena must be served at least 5 business days prior to trial.
- (c) The judge will conduct the trial and question the witnesses. The trial will be conducted in such a way as to give all parties a reasonable opportunity to present their positions. The judge may allow parties or their counsel to question witnesses.
- (d) The judge may receive the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their business affairs. The rules of evidence shall not be applied strictly. The judge may allow hearsay that is probative, trustworthy and credible. Irrelevant or unduly repetitious evidence shall be excluded.
- (e) After trial, the judge shall decide the case and direct the entry of judgment. No written findings are required. The clerk of the court will serve all parties present with a copy of the judgment.
- (f) Costs will be awarded to the prevailing party and to plaintiff in an interpleader action unless the judge otherwise orders.

Rule 8. Dismissal.

- (a) Except in interpleader cases, if plaintiff fails to appear at the time set for trial, plaintiff's claim will be dismissed.
- (b) If defendant has filed a counter affidavit and fails to appear at the time set for trial, defendant's claim will be dismissed.

- (c) A party may move to dismiss its claim at any time before trial.
- (d) Dismissal is without prejudice unless the judge otherwise orders. The appearing party shall serve the order of dismissal on the non-appearing party.

Rule 9. Default judgment.

- (a) If defendant fails to appear at the time set for trial, the court may grant plaintiff judgment in an amount not to exceed the amount requested in plaintiff's affidavit.
- (b) If defendant has filed a counter affidavit and plaintiff fails to appear at the time set for trial, the court may grant defendant judgment in an amount not to exceed the amount requested in defendant's counter affidavit.
- (c) The appearing party shall immediately serve the default judgment on the non-appearing party.
- (d) In an interpleader action, if a defendant fails to appear, a default judgment may be entered against the non-appearing defendant.

Rule 10. Set aside of default judgments and dismissals.

- (a) A party may request that the default judgment or dismissal be set aside by filing a motion to set aside within 15 calendar days after entry of the judgment or dismissal. If the court receives a timely motion to set aside the default judgment or dismissal and good cause is shown, the court may grant the motion and reschedule a trial. The court may require the moving party to pay the costs incurred by the other party.
- (b) The period for moving to set aside a default judgment or dismissal may be extended by the court for good cause if the motion is made in a reasonable time.

Rule 11. Collection of judgments.

- (a) Judgments may be collected under the Utah Rules of Civil Procedure.
- (b) Upon payment in full of the judgment, including post-judgment costs and interest, the judgment creditor shall file a satisfaction of judgment with the court. Upon receipt of a satisfaction of judgment from the judgment creditor, the clerk of the court shall enter the satisfaction upon the docket. The judgment debtor may file a satisfaction of judgment and proof of payment. If the judgment creditor fails to object within 10 business days after notice, the court may enter satisfaction of the judgment. If the judgment creditor objects to the proposed satisfaction, the court shall rule on the matter and may conduct a hearing.
- (c) If the judgment creditor is unavailable to accept payment of the judgment, the judgment debtor may pay the amount of the judgment into court and serve the creditor with notice of payment in the manner directed by the court as most likely to give the creditor actual notice, which may include publication. After 30 calendar days after final notice, the debtor may file a satisfaction of judgment and the court may conduct a hearing. The court will hold the money in trust for the creditor for the period required by state law. If not claimed by the judgment creditor, the clerk of the court shall transfer the money to the Unclaimed Property Division of the Office of the State Treasurer.

Rule 13. Representation.

A party in a small claims action may be self-represented, represented by an attorney admitted to practice law in Utah, represented by an employee, or, with the express approval of the court, represented by any other person who is not compensated for the representation.

End of Utah Rules of Small Claims Procedure

**STATUTES GOVERNING SMALL CLAIMS
THROUGH 2008 LEGISLATIVE SESSIONS**

**TITLE 78A, CHAPTER 8
SMALL CLAIMS COURTS**

Section

78A-8-101. Creation.

78A-8-102. Small claims - Defined - Counsel not necessary - Deferring multiple claims of one plaintiff - Supreme Court to govern procedures.

78A-8-103. Assignee may not file claim.

78A-8-104. Object of small claims - Attachment, garnishment, and execution.

78A-8-105. Civil filing fees.

78A-8-106. Appeals - Who may take and jurisdiction.

78A-8-107. Costs.

78A-8-108. Evening hours - Judges pro tempore.

78A-8-109. Report to Judiciary Interim Committee.

78A-8-101. Creation.

78A-8-101. Creation.

There is created a limited jurisdiction division of the district court designated small claims court.

78A-8-102. Small claims - Defined - Counsel not necessary - Deferring multiple claims of one plaintiff - Supreme Court to govern procedures.

(1) A small claims action is a civil action:

(a) for the recovery of money where:

(i) the amount claimed does not exceed **\$7,500 including attorney fees but exclusive of court costs and interest; and

(ii) the defendant resides or the action of indebtedness was incurred within the jurisdiction of the court in which the action is to be maintained; or

(b) involving interpleader under Rule 22 of the Utah Rules of Civil Procedure, in which the amount claimed does not exceed **\$7,500 including attorney fees but exclusive of court costs and interest.

(2) The judgment in a small claims action may not exceed **\$7,500 including attorney fees but exclusive of court costs and interest.

** \$10,000 eff. 5/12/09

(3) Counter claims may be maintained in small claims actions if the counter claim arises out of the transaction or occurrence which is the subject matter of the plaintiff's claim. A counter claim may not be raised for the first time in the trial de novo of the small claims action.

(4) (a) With or without counsel, persons or corporations may litigate actions on behalf of themselves:

(i) in person; or

(ii) through authorized employees.

(b) A person or corporation may be represented in an action by an individual who is not an employee of the person or corporation and is not licensed to practice law only in accordance with the Utah rules of small claims procedure as promulgated by the Supreme Court.

(5) If a person or corporation other than a municipality or a political subdivision of the state files multiple small claims in any one court, the clerk or judge of the court may remove all but the initial claim from the court's calendar in order to dispose of all other small claims matters. Claims so removed shall be rescheduled as permitted by the court's calendar.

(6) Small claims matters shall be managed in accordance with simplified rules of procedure and evidence promulgated by the Supreme Court.

78A-8-103. Assignee may not file claim.

A claim may not be filed or prosecuted in small claims court by any assignee of a claim.

78A-8-104. Object of small claims - Attachment, garnishment, and execution.

(1) The hearing in a small claims action has the sole object of dispensing speedy justice between the parties. The record of small claims proceedings shall be as provided by rule of the Judicial Council.

(2) Attachment, garnishment, and execution may issue after judgment as prescribed by law, upon the payment of the fees required for those services.

78A-8-105. Civil filing fees.

(1) Except as provided in this section, the fees for a small claims action in justice court shall be the same as provided in Section 78A-2-301.

(2) Fees collected in small claims actions filed in municipal justice court are remitted to the municipal treasurer. Fees collected in small claims actions filed in a county justice court are remitted to the county treasurer.

(3) (a) Seven dollars and 50 cents shall be withheld from the fee for the small claims affidavit and allocated to the Judges' Retirement Trust Fund. Five dollars shall be withheld from the fee for a small claims counter affidavit and allocated to the Judges' Retirement Trust Fund.

(b) Four dollars withheld from the civil filing fee in a court of record as provided in Subsection 51-9-408(4)(b) may not apply to the fees collected for small claims actions in justice court.

(4) The fee in the justice court for filing a notice of appeal for trial de novo in a court of record is \$10. The fee covers all services of the justice court on appeal but does not satisfy the trial de novo

filing fee in the court of record.

78A-8-106. Appeals - Who may take and jurisdiction.

(1) Either party may appeal the judgment in a small claims action to the district court of the county by filing a notice of appeal in the original trial court within 30 days of entry of the judgment. If the judgment in a small claims action is entered by a judge or judge pro tempore of the district court, the notice of appeal shall be filed with the district court.

(2) The appeal is a trial de novo and shall be tried in accordance with the procedures of small claims actions. A record of the trial shall be maintained. The trial de novo may not be heard by a judge pro tempore appointed under Section 78A-8-108. The decision of the trial de novo may not be appealed unless the court rules on the constitutionality of a statute or ordinance.

78A-8-107. Costs.

The prevailing party in any small claims action is entitled to costs of the action and also the costs of execution upon a judgment rendered therein.

78A-8-108. Evening hours - Judges pro tempore.

(1) The district or justice court may request that the Supreme Court appoint a member of the Utah State Bar in good standing, with the member's consent, as judge pro tempore to hear and determine small claims at times, including evening sessions, to be set by the court.

(2) After being duly sworn, judges pro tempore shall:

(a) serve voluntarily and without compensation at the request of the court; and

(b) be extended the same immunities, and have the same powers with respect to matters within the jurisdiction of the small claims court as exercised by a regular judge.

78A-8-109. Report to Judiciary Interim Committee.

The Judicial Council shall present to the Judiciary Interim Committee not later than November 30 of each odd-numbered year a report and recommendation concerning the maximum amount of small claims actions.

JUSTICE COURT JURISDICTION - SMALL CLAIMS

78A-7-106. Jurisdiction.

(6) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8, Small Claims Courts, if a defendant resides in or the debt arose within the territorial jurisdiction of the justice court.

End of Small Claims Statutes

Appendix of SMALL CLAIMS FORMS

- A. Small Claims Cover Sheet.
- B. Small Claims Affidavit and Summons.
- C. Small Claims Interpleader Affidavit and Summons.
- D. Proof of Service.
- E. Small Claims Counter Affidavit and Summons.
- F. Motion to Dismiss and Order.
- G. Motion for Continuance and Order.
- H. Small Claims Judgment.
- I. Small Claims Judgment Interpleader.
- J. Notice of Default Judgment.
- K. Motion to Set Aside and Order.
- L. Notice of Appeal.
- M. Satisfaction of Small Claims Judgment.
- N. Judgment Information Sheet.
- O. Abstract of Judgment.
- P. Military Service Affidavit.
- Q. Military Service Order.